PUBLIC PROSECUTOR v. NELSON

[A. Cr. J. (Rigby J.) November 25, 1960]

[Penang — Criminal Appeal No. 37 of 1960]

Road Traffic — Notice of intended prosecution — Time of offence stated as "12.30 a.m." instead of "12.15 a.m." — Date of offence stated as "16.5.60" instead of "16.7.60" — Whether notice valid — Road Traffic Ordinance, 1958, s.56.

In this case the respondent was served with a notice of intended prosecution under section 56(b) of the Road Traffic Ordinance, 1958. Due to carelessness on the part of the Police Officer drafting the notice, the time of the offence was stated as "12.30 a.m." instead of "12.15 a.m." and the date of the offence was stated as "16.5.60" instead of "16.7.60." The respondent contended that in view of these errors there had not been a valid and sufficient notice under the provisions of section 56(b).

Held: (1) the provisions of section 56(b) must be considered with a modicum of common sense, the object of the section being to enable a notice to be served on the driver to call his attention to the time and circumstances of the accident in respect of which he might be charged so as to give him an opportunity in good time while memories are still fresh to prepare his defence;

(2) whilst the notice of intended prosecution was itself mandatory, the requirements to be included in that notice were directory and not mandatory;

(3) as there was no possibility in this case of the respondent being misled by the inaccuracy as to the time or date in the notice, having regard to the fact that the place of accident had been correctly stated and also that the serving of the notice upon him was just over twelve hours after the accident, his contention could not be sustained.

Pope v. *Clarke* (1) followed.

Case referred to:—

(1) *Pope* v. *Clarke* [1953] 2 All E.R. 704.

[**Editorial Note:** *cf. Public Prosecutor* v. *Teh Khian Long* [1961] M.L.J. 47 in which the date set out in the notice differed from that set out in the charge by one day.]

MAGISTRATE'S CRIMINAL APPEAL.

L. A. Massie (Deputy Public Prosecutor) for the appellant.

Respondent absent.

Rigby J. (delivering oral judgment): At about 12.15 a.m. on the 16th July, 1960, a motor car accident took place at the junction of Burmah Road and Kinta Lane, Penang, as the result of which a trishaw rider was killed. The police were on the scene shortly after the accident had occurred and as the result of investigations made by them the respondent Frank Thomas Nelson was charged with dangerous driving. At the hearing of that charge a preliminary point was submitted on behalf of the respondent that he was not liable to prosecution and that the trial could not proceed on the ground that there had not been a valid compliance with the provisions of section 56(b) of the Road Traffic Ordinance, 1958. That section provides that where a person is prosecuted for an offence under section 35 or section 36 of the Road Traffic Ordinance — and those sections deal with charges of dangerous driving and careless and inconsiderate driving :—

> "He shall not be convicted unless within 14 days of the commission of the offence either (a) a summons for the offence was served on him, or (b) a notice in writing of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence."

It would appear that after the accident had occurred a notice of intended prosecution was served on the respondent at the R.A.A.F. Leave Centre, Tanjong Bungah, at 1.05 p.m. that same day — just over 12 hours after the accident had occurred. Due to some apparent carelessness on the part of the Police Traffic Officer who had drafted that notice the time of the offence was stated as "12.30 a.m." instead of "12.15 a.m." and the date of the offence was stated as "16.5.60" instead of "16.7.60". When the case came for trial, as I have stated, it was contended on behalf of the respondent that having regard to the provisions of section 56(b) there had not been a valid and sufficient compliance with the provisions of that section in that both the time and date had been wrongly stated. The learned Magistrate accepted that submission, and acquitted and discharged the respondent on the ground that the provisions of that section were mandatory and they had not been properly complied with.

As Lord Goddard, the former Lord Chief Justice of England, repeated on no less than two occasions, the provisions of this section, to which the counterpart is section 21 of the Road Traffic Act, 1930, require to be considered with a modicum of common sense. It has repeatedly been stated in the English Courts that the object of this section is to enable a notice to be served on the driver of the motor car to call his attention to the time and circumstances of the accident in respect of which he might be charged so as to give him an opportunity in good time while memories are still fresh to prepare his defence. In the case of *Pope* v. *Clarke*(1), which was a case in which the time had been inaccurately stated in the notice of intended prosecution, Lord Goddard made it clear that while the notice of intended prosecution was itself mandatory the requirements to be included in that notice were directory and not mandatory. In this case it was abundantly clear from the question asked by the respondent's own counsel that the respondent was not present in Penang on the 16th May, 1960, so that there was no possible question of him having been misled by the charge. The notice of intended prosecution,

I repeat, was served upon him just over 12 hours after this accident had occurred. It is inconceivable that he could in any way have been misled by the inaccuracy either as to the time or date as stated in the notice of intended prosecution, having regard to the fact that the place at which the accident had occurred had been stated to be in Burmah Road, Penang. He was informed by the notice of intended prosecution of the exact place where he was alleged to have committed the offence and that was the place where the accident happened. It is idle to suggest that his mind was not at once directed to the actual occurrence in respect of which he was going to be prosecuted. I have no hesitation in allowing this appeal and remitting the case to the lower Court for the charge to be proceeded with.

Appeal allowed.

NG THAM & ANOR. v. JURONG GRANITE QUARRY LTD.

[O.C.J. (Wee Chong Jin J.) December 12, 1960]

[Singapore — Suit No. 955 of 1958]

Landlord and Tenant — Royalty on sale of granite — Whether "rent" — Non-payment of royalty — Forfeiture — Conveyancing and Law of Property Ordinance, (Cap. 243), ss.2, 18(1) and (9).

This action arose out of a lease granted by the 1st plaintiff and one Lim Han, deceased, to the defendant company of a piece of land. One of the terms of the lease was that the company shall during the term of the lease pay to the landlords certain royalties in respect of the granite produced and sold. The defendant company never paid any royalties and never rendered any accounts of the granite produced and sold by them. The issue was whether the plaintiffs were entitled to a right of forfeiture by reason of the defendant company's failure to pay any royalties. The defendant company contended that section 18(1) of the Conveyancing and Law of Property Ordinance had not been complied with, while the plaintiffs relied on section 18(9) of the said Ordinance.

Held: by virtue of section 2 of the Ordinance, the royalties reserved under the lease is rent within the meaning of section 18(9).

Per Wee Chong Jin J.: "Even if rent had not been defined in the Ordinance, it is clear law that a royalty is a true rent."

ACTION.

D. G. Osborne-Jones for the plaintiffs.

J. E. Lloyd for the respondents.

Cur. Adv. Vult.

Wee Chong Jin J.: This action arose out of a lease granted by the first plaintiff and one Lim Han, deceased, to the defendant Jurong Granite Quarry Ltd. of a piece of land known as Lot 48², Mukim X. The lease was made on the 18th of January, 1958 for a term of 4½ years.

Clause 5 of the lease is in the following terms :—

"5. The company shall during the said term pay to the landlords the following royalties that is to say:—

(a) In respect of all granite (whether large or small size) produced and sold, a royalty of eighty (80) cents per cubic yard based on the quantities sold, to be payable by the company to the landlords monthly and not later than the 15th day of the following month.

(b) The minimum quantity of granite sold shall be five hundred (500) cubic yards per month.

(c) For all granite powder, granite mixed with earth, the royalty chargeable shall be dollars one ($1.00) per lorry sold.

(d) In case the said royalty hereby reserved shall not amount in the whole according to the quantity of 500 cubic yards of granite raised or sold then the aggregate amount of such royalties for such month shall be made by the company in the sum of Dollars four hundred ($400) per month.

(e) In case the company ceases work completely in the quarry, then the company shall only pay Dollars three hundred ($300) *per mensem* to the landlords."

At the trial it was admitted that the defendant company never paid any royalties and never rendered any accounts of the granite produced and sold by them.

During the course of the trial it was conceded by counsel for the defendant company that the plaintiffs were entitled to judgment for an account of all granite sold since the date of the lease and it was conceded by counsel for the plaintiffs that the plaintiffs were not entitled to any damages for breach of covenant over and beyond the sum found to be due and payable by the defendant company to the plaintiffs on the taking of the account.

The only issue left in dispute was whether the plaintiffs were entitled to a right of forfeiture by reason of the defendant company's failure to pay any royalties at all. The defendant company relied on section 18 (1) of the Conveyancing and Law of Property Ordinance, (Chapter 243), contending that this sub-section had not been complied with by the plaintiffs.

The plaintiffs' contention on the other hand was that section 18 (9) which states "This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent" applied.

The real question therefore is whether the royalties reserved under clause 5 of the lease is rent within the meaning of section 18 (9).

By section 2 of the Conveyancing and Law of Property Ordinance, "rent" is defined as including "yearly or other rent, toll, duty, royalty or other reservation by the area, quantity, weight or otherwise".

In my opinion it is clear by virtue of the definition of rent contained in section 2 that the defendant company's contention must fail. Even if rent had not been defined in the Ordinance it is clear law that a royalty is a true rent and the defendant company has by clause 6 (a) of the lease covenanted to pay the royalties payable under clause 5. It follows therefore that the plaintiffs on this issue are entitled to judgment in terms of paragraph 9 (a) of the statement of claim.

Claim allowed.

Solicitors: *Osborne-Jones & Co.; Drew & Napier.*